

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 13, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES BOHN, an individual,

No. 2:20-cv-00257-SMJ

Plaintiff,

**ORDER GRANTING MOTION TO
DISMISS**

v.

CHELAN COUNTY, a municipal
corporation, THE UNITED STATES
OF AMERICA, THE UNITED
STATES BUREAU OF
RECLAMATION, and THE UNITED
STATES NATIONAL PARK
SERVICE

Defendants.

Before the Court, without oral argument, is the United States' Motion to Dismiss, ECF No. 23. The United States argues that Plaintiff failed to sue within the limitation period and urges this Court to dismiss for lack of subject-matter jurisdiction. The Court has reviewed the file and is fully informed. For the reasons below, the Court grants the motion to dismiss.

BACKGROUND

This suit arises out of the United States' ownership of Stehekin Valley Road ("SVR") in Chelan County, Washington, within the boundaries of the Lake Chelan

1 National Recreational Area and the North Cascades National Park. ECF No. 1 at 7.
2 Plaintiff owns a parcel of land that SVR bisects. *Id.* Plaintiff alleges an unlawful
3 taking and seeks a declaratory judgment that SVR exists as a county road and that
4 Chelan County did not validly convey SVR to the United States. *Id.* at 14.

5 In 1970, the Chelan County Board of County Commissioners (“the Board”) executed a quitclaim deed conveying “all right, title, interest in and to” SVR. *Id.* at
6 9. The Board also executed a resolution vacating the remaining portion of Chelan
7 County Road No. 21. *Id.* The quitclaim deed granting the United States its interest
8 was recorded under Auditor No. 699842 later that year. *Id.* at 81.

10 In response to the Board’s actions, twenty-nine individual property owners
11 and the Stehekin River Resort sued Chelan County to nullify the conveyance. *See*
12 *Stehekin River Resort, Inc. v. Chelan Cnty.*, No. 25845 (Chelan Cnty. Superior Ct. 1970).
13 The suit settled in 1973. ECF No. 1 at 96. The parties agreed Chelan County
14 had authority to convey SVR to the United States. *Id.* The parties’ stipulation also
15 stated the United States had agreed to maintain SVR to enable residents’ reasonable
16 ingress and egress. *Id.*

17 In 1991, the Board executed a resolution in an effort to rescind the 1970
18 quitclaim deed. ECF No. 1 at 86. In response, the United States filed a quiet title
19 action in 1992. *See United States v. Chelan Cnty.*, No. 2:92-cv-0331-AAM, at ECF
20 No. 1 (E.D. Wash. Aug. 31, 1992). The district court granted summary judgment in

1 favor of the United States and found that the United States held exclusive title to
2 SVR. *Id.* at ECF No. 72 (June 4, 1993).

3 Plaintiff bought his property in 1985. ECF No. 25 at 5. In 1997, Plaintiff
4 wrote a letter to the National Park Service (NPS), requesting information regarding
5 the status of SVR. ECF No. 1 at 39.

6 In 2007, Plaintiff was stopped by a NPS ranger while riding a motorcycle on
7 SVR. *United States v. Bohn*, 622 F.3d 1129, 1132 (9th Cir. 2010). Plaintiff sued,
8 challenging NPS's authority to issue a ticket on SVR. *Id.* The Ninth Circuit
9 ultimately upheld NPS's authority to issue such citations, based on NPS's
10 proprietary jurisdiction over SVR and the Property Clause of the Constitution. *Id.*
11 The Ninth Circuit also recognized the United States had prevailed in the 1992 quiet
12 title action. *Id.* at 1132 n.1.

13 Plaintiff sued on June 18, 2020. ECF No. 1 at 1.

14 **LEGAL STANDARD**

15 Rule 12(b)(1) of the Federal Rules of Civil Procedure provides for dismissal
16 of an action for "lack of subject matter jurisdiction." Faced with a Rule 12(b)(1)
17 motion, a plaintiff bears the burden of proving the existence of the court's subject
18 matter jurisdiction. *Thompson v. McCombe*, 99 F.3d 352, 353 (9th Cir. 1996). The
19 court may "hear evidence regarding jurisdiction and resolve factual disputes where
20 necessary." *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009). If a

1 federal court finds that it lacks subject matter jurisdiction, it must dismiss the action.
 2 *See* Fed. R. Civ. P. 12(h)(3).

3 The United States, as a sovereign, is immune from suit unless it has waived
 4 its immunity. *Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 260 (1999). A court
 5 lacks subject matter jurisdiction over a claim against the United States if the United
 6 States has not consented to be sued on that claim. *Consejo de Desarrollo Economico*
 7 *de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1173 (9th Cir. 2007). A waiver
 8 of sovereign immunity by the United States must be expressed unequivocally. *Lane*
 9 *v. Pena*, 518 U.S. 187, 192 (1996). “When the United States consents to be sued,
 10 the terms of its waiver of sovereign immunity define the extent of the court’s
 11 jurisdiction.” *United States v. Mottaz*, 476 U.S. 834, 841 (1986). In an action under
 12 the Quiet Title Act, “[t]he running of the twelve-year limitations period deprives
 13 the federal courts of ‘jurisdiction to inquire into the merits.’” *Kingman Reef Atoll*
 14 *Investments, L.L.C. v. United States*, 541 F.3d 1189, 1195–96 (9th Cir. 2008)
 15 (quoting *Block v. North Dakota*, 461 U.S. 273, 292 (1983)).

16 DISCUSSION

17 A. Plaintiff’s claim amount to allegation under the Quiet Title Act

18 The Court agrees that while Plaintiff frames his claims in terms of declaratory
 19 relief and a constitutional “taking,” they amount to a challenge to the United States’
 20 title in SVR and thus can only be brought under the Quiet Title Act (QTA).

1 Under the QTA, “[t]he United States may be named as a party defendant in
2 a civil action . . . to adjudicate a disputed title to real property in which the United
3 States claims an interest.” 28 U.S.C. § 2409a(a). The QTA is the “exclusive means
4 by which adverse claimants [may] challenge the United States’ title to real
5 property.” *Block*, 461 U.S. at 287.

6 A Plaintiff cannot hide a QTA claim by naming other causes of action. In
7 *Mottaz*, for example, the plaintiff sued the United States, alleging the government
8 sold some of her allotments without her permission and, as a result, those transfers
9 were void. 476 U.S. at 838. She also asserted that she had been deprived of property
10 without due process or just compensation. *Id.* The Court determined plaintiff’s
11 “takings” allegation really challenged the government’s title to the land. It reasoned
12 that the plaintiff claimed “she still owns her interests in the allotments, and she seeks
13 to force the Government to buy those interests. She claims, in essence, that no
14 legally cognizable taking has yet occurred.” *Id.* at 851. The Court thus determined
15 plaintiff needed to bring her case under the QTA within its 12-year statute of
16 limitation. *Id.* Similarly, plaintiffs cannot avoid the QTA’s statute of limitations
17 through disguising their claims using the Declaratory Judgment Act (“DJA”). *See*
18 *Alaska Dep’t of Nat. Res. v. United States*, 816 F.3d 580, 586 (9th Cir. 2016)
19 (determining that the claim for declaratory relief which sought essentially the same
20 relief as the quiet title claim was properly dismissed); *McMaster v. United States*,

1 731 F.3d 881, 900 (9th Cir. 2013) (upholding dismissal of plaintiff's DJA claims
2 because "the QTA is the exclusive means by which adverse claimants can challenge
3 the United States' title to real property" and "the crux of [plaintiff]'s DJA claims is
4 that [he] is entitled to fee-simple ownership") (internal quotation marks omitted).

5 Likewise, Plaintiff claims that title in SVR did not validly pass to the United
6 States. *See* ECF No. 1 at 14. He has presented a QTA claim disguised as a takings
7 claim. The QTA is the only way Plaintiff could challenge title in this case.

8 **B. Plaintiff's claims are untimely**

9 Under the QTA, Plaintiff had to file his claim within twelve years of when
10 he knew or should have known of an adverse claim in SVR. 28 U.S.C. § 2409a(g).
11 Courts have adopted a reasonableness test. *California ex rel. State Land Comm'n v.*
12 *Yuba Goldfields, Inc.*, 752 F.2d 393, 396 (9th Cir. 1985). "The question is whether
13 the United States' action would have alerted a reasonable landowner that the
14 government claimed an interest in the land." *Shultz v. Dept. of Army*, 886 F.2d 1157,
15 1160 (9th Cir. 1989). Because Plaintiff sued on June 23, 2020, the statute of
16 limitations bars his claims if he had constructive notice before June 23, 2008. The
17 Court finds that Plaintiff knew or should have known that the United States claimed
18 an interest adverse to Plaintiff's property right before that date.

19 Plaintiff had constructive notice since at least 1985, when he bought his
20 property. "[T]he recording of a deed imparts constructive notice of the estate or

1 interest acquired to all subsequent purchasers, whether or not they are bona fide
2 purchasers for value and whether or not they have actual notice of the conveyance.”
3 *Newport Yacht Basin Ass’n of Condo. Owners v. Supreme Nw., Inc.*, 277 P.3d 18,
4 30 (Wash. Ct. App. 2012). The United States recorded its quitclaim deed in 1970.
5 ECF No. 1 at 81.

6 And Plaintiff had *actual* knowledge of the possibility of federal ownership
7 since *at least* 1997. Early that year, Plaintiff sent a letter to NPS asking about the
8 result of the 1993 quiet title lawsuit because he “became concerned with the
9 language of the order referencing conveyance of land in fee title without apparent
10 recognition of the road’s actual legal basis as a ROW.” ECF No. 25 at 7. Plaintiff
11 also communicated with NPS, including communications about SVR, before 1997.
12 *See* ECF No. 25 at 6, 9, 23 & 27. Plaintiff was aware that, even if the United States
13 was not currently asserting any ownership rights, it “[was] mak[ing] a ‘claim that
14 creates . . . a cloud on’” his ownership interest. *See Kingman Reef Atoll Investments,*
15 *L.L.C.*, 541 F.3d at 1198.

16 Plaintiff argues that NPS’s response to his inquiry misled him, and that the
17 Court should toll the statute of limitations or apply the doctrine of equitable
18 estoppel. ECF No. 25 at 5; *see also id.* at 8 (“With this written assurance that the
19 NPS was not making a claim on plaintiff’s underlying, servient property rights,
20 plaintiff’s concerns were temporarily satisfied.” (emphasis in original)). The Court

1 cannot determine that there was any fraudulent concealment by any Defendant or
2 any other reason to toll the statute of limitations.

3 More importantly, though, even if Plaintiff would be entitled to tolling or
4 equitable estoppel in other circumstances, such doctrines are unavailable to Plaintiff
5 for a QTA claim. *Kingman Reef Atoll Investments, L.L.C.*, 541 F.3d at 1195–96
6 (“The Supreme Court has already held that Congress intended the QTA’s
7 limitations period to serve interests of finality, and therefore it may not be tolled.”).
8 “The Supreme Court has held that this limitations period is a central condition of
9 the consent [to be sued] given by the [QTA].” *Fidelity Expl. and Prod. Co. v. United*
10 *States*, 506 F.3d 1182, 1185 (9th Cir. 2007) (internal quotation marks and citation
11 omitted). So, the conditions of the statute’s waiver of immunity “must be strictly
12 observed, and exceptions thereto are not to be lightly implied.” *Id.* at 1185–86.
13 Plaintiff has known about the cloud on the title of SVR for more than twenty years
14 and had constructive notice for more than thirty-five years. The time for a QTA
15 claim has passed.

16 CONCLUSION

17 The Court must dismiss this case as untimely. Although much of Plaintiff’s
18 responses are spent reiterating the alleged importance of his suit, the Court cannot
19 reach the merits when it lacks jurisdiction. *See* ECF No. 25 at 4. Because Plaintiff
20 could not amend his Complaint to properly allege jurisdiction, the Court dismisses

1 this case with prejudice. *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015)
2 (“A district court should not dismiss a pro se complaint without leave to amend
3 unless it is absolutely clear that the deficiencies of the complaint could not be cured
4 by amendment”) (internal quotation omitted).

5 Accordingly, **IT IS HEREBY ORDERED:**

6 **1.** The United States’ Motion to Dismiss, **ECF No. 23**, is **GRANTED**.

7 **2.** Plaintiff’s Complaint, ECF No. 1-1 at 7–15 is **DISMISSED WITH**
8 **PREJUDICE** with all parties to bear their own costs and attorney fees.


9 **3.** All pending motions are **DENIED AS MOOT**.

10 **4.** All hearings and other deadlines are **STRICKEN**.

11 **5.** The Clerk’s Office is directed to **ENTER JUDGMENT** in favor of
12 Defendants and **CLOSE** the file.

13 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and
14 provide copies to all counsel and *pro se* parties.

15 **DATED** this 13th day of April 2021.

16 
17 SALVADOR MENDOZA, JR.
United States District Judge